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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

DAPHNE P. RAND, by and through DEBRA J.  
 DOLCH, as Conservator of the Person and  
 Estate of DAPHNE P. RAND, Conservatee, on  
 Behalf of Themselves and All Others Similarly  
 Situated.

Plaintiff,

vs.

AMERICAN NATIONAL INSURANCE  
 COMPANY, a Texas corporation.

Defendant.

CLASS ACTION COMPLAINT FOR:

**CLASS ACTION**

1. Violations of Cal. Bus. & Prof. Code §17200 *et seq.*
2. Violations of Cal. Bus. & Prof. Code §17500 *et seq.*
3. Violations of Financial Elder Abuse, Welf. & Inst. Code §15600 *et seq.*

**DEMAND FOR JURY TRIAL**

1. Plaintiff Daphne P. Rand ("Plaintiff" or "Ms. Rand"), by and through Debra J. Dolch, as Conservator of the Person and Estate of Daphne P. Rand, Conservatee, brings this class action complaint against American National Insurance Company ("American National" or "Defendant") on

1 behalf of themselves and all other similarly situated persons. Upon information and belief, as well  
2 as the investigation of counsel, Plaintiff alleges as follows:

### 3 INTRODUCTION

4 2. Plaintiff Daphne Rand brings this California state-wide class action on behalf of  
5 herself and other similarly situated consumers to halt and remedy the harm caused by Defendant  
6 American National Insurance Company's systematic unfair, deceptive and unlawful sales practices  
7 in connection with the solicitation, offering and sale of deferred annuity products ("deferred  
8 annuities"), excluding variable annuities, to all purchasers in California. Defendant formulated and  
9 implemented a deceptive scheme to systematically market and sell fixed and equity indexed  
10 deferred annuities, in part, by omitting or failing to fully disclose all material facts and risks  
11 associated with the deferred annuity products.

12 3. Defendant's scheme targets consumers like Plaintiff as prospective purchasers of  
13 deferred annuities even though they are unlikely to receive any benefit from the annuity because of  
14 the long-term nature of deferred annuity products, maturity dates (*i.e.*, the date on which income  
15 payments will begin), in addition to high surrender charges and penalties for early withdrawal and/or  
16 illusory bonus features, rates and other product features which do not benefit annuity purchasers. By  
17 and through their network of sales and marketing agents, Defendant trains and encourages agents to  
18 market and sell its deferred annuity products using American National marketing materials,  
19 brochures and presentations, encouraging consumers to consolidate their savings and other  
20 investments into Defendant's deferred annuities. On the other hand, American National's uniform  
21 marketing materials, brochures and presentations omit or fail to fully disclose all material facts and  
22 risks associated with the deferred annuity products, including, but not limited to, that the  
23 products: tie up their money for up to 10 years or more; that the products carry exorbitant "surrender  
24 charges;" and that the products subject policyholders to undisclosed tax penalties and create  
25 complicated estate problems for their loved ones after their death.

26 4. Plaintiff brings this class action on behalf of herself and all other persons (or their  
27 beneficiaries) who were issued one or more American National deferred annuity policies in the State  
28

1 of California, or who, within the applicable statute of limitations, purchased or surrendered one or  
 2 more American National deferred annuity policies ("the Class" or "Class Members").

3 5. Plaintiff alleges that Defendant's deferred annuity sales practices described herein  
 4 violate Cal. Bus. & Prof. Code §§ 17200, *et seq.* and Cal. Bus. & Prof. Code §§ 17500, *et seq.*  
 5 Plaintiff also alleges that Defendant's sales practices violate Cal. Welf. & Inst. Code §§ 15600, *et*  
 6 *seq.* Through this action, Plaintiff does assert any claims based on fraud, nor does she ground any of  
 7 her current claims on fraud.

8 6. This action seeks to enjoin Defendant from engaging in their illegal and  
 9 unconscionable sales practices, including the form and substance of their disclosures regarding the  
 10 drawbacks of deferred annuities. It also seeks to compensate the victims of Defendant's scheme and  
 11 penalize Defendant for its wrongful practices.

## 12 JURISDICTION AND VENUE

13 7. This Court has original jurisdiction over the subject matter of this action pursuant to  
 14 28 U.S.C. §1332. The Court has supplemental jurisdiction over the state law claims pursuant to 28  
 15 U.S.C. §1367. The amount in controversy exceeds \$75,000 for each plaintiff, exclusive of costs and  
 16 interest. Furthermore, the aggregate amount in controversy for this class action exceeds \$5,000,000,  
 17 and all members of the proposed Class are citizens of a State different from Defendant. *See* Class  
 18 Action Fairness Act ("CAFA"), 28 U.S.C. §1711.

19 8. Plaintiff files this class action pursuant to Rule 23 of the Federal Rules of Civil  
 20 Procedure ("F.R.C.P."). Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because a  
 21 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.

## 22 PARTIES

23 9. At all relevant times herein, Plaintiff Daphne Rand is and/or was an 86-year-old  
 24 resident of the City and County of San Francisco, California, and is an "elder" within the meaning of  
 25 California Welfare and Institutions Code §15610.27.

26 10. On or about August 11, 2006, the San Francisco Superior Court (Case No. PCN-06-  
 27 289016) appointed Debra J. Dolch to act as temporary conservator of the estate and person of  
 28

1 Plaintiff. On November 9, 2006, Debra J. Dolch was appointed permanent conservator, and the  
2 Letter of Conservatorship was approved on November 9, 2006.

3 11. On February 11, the San Francisco Superior Court issued an order permitting Debra J.  
4 Dolch, as conservator for Plaintiff, to bring suit against Defendant in this action.

5 12. Defendant American National is a Texas corporation headquartered in Galveston, TX  
6 that is licensed to transact insurance in 50 states, the District of Columbia, Puerto Rico and  
7 American Samoa, and, as of September 30, 2008, had assets totaling nearly \$18.8 billion.

8 13. Directly and through subsidiaries, American National offers a broad line of insurance  
9 products and services, including life insurance, annuities, health insurance, property and casualty,  
10 credit insurance, and pension plan services.

11 14. At all times mentioned in the causes of action alleged herein, each and every  
12 Defendant was an agent and/or employee of each and every other Defendant. In doing the things  
13 alleged in the causes of action stated herein, each and every Defendant was acting within the course  
14 and scope of this agency or employment and was acting with the consent, permission and  
15 authorization of each of the remaining Defendants. All actions of each Defendant, as alleged in the  
16 causes of action stated herein, were ratified and approved by every other Defendant or its officers or  
17 managing agents.

18 15. Whenever reference in this Complaint is made to any act of any Defendant named  
19 herein or other corporate Defendant as may be named in the future course of this action, such  
20 allegation shall be deemed to mean that the officers, directors, agents, subsidiaries, affiliates and  
21 employees of said Defendant did or authorized such act while actively engaged in the management,  
22 direction, or control of affairs of the corporate Defendant, and while acting within the course and  
23 scope of their employment.

## 24 **FACTUAL ALLEGATIONS**

### 25 **Deferred Annuity Policies**

26 16. An annuity is a contract between an annuitant and an insurance company pursuant to  
27 which the annuitant makes an upfront lump-sum payment or a series of payments to the insurance  
28 company. The insurance company, in turn, agrees to make payments to the annuitant over a period

1 of time. With a standard or “immediate” annuity, the consumer has a right to a stream of income via  
2 payments from the insurance company that is usually guaranteed to last for as long as the consumer  
3 is alive.

4 17. With a deferred annuity, the annuitant foregoes payment until some point in the  
5 future. During this deferral period, the earnings on the annuitant’s premium payments grow, tax-  
6 deferred. Thus, deferred annuities are very different from immediate annuities and provide a long-  
7 term investment vehicle, not an immediate income stream and effectively lock up the purchaser’s  
8 money for lengthy periods, typically up to 10 years or more. The annuities at issue in this Complaint  
9 are deferred annuities (specifically, “fixed” deferred and “equity indexed” deferred annuities).

10 18. There are at least two kinds of deferred annuities: a “fixed” deferred annuity and an  
11 “equity indexed” deferred annuity, both of which by their very nature and design, are highly  
12 complex investment products.

13 (a) A “fixed” annuity is an annuity in which the insurance company offers a  
14 guaranteed interest rate for a set period of time on the annuitant’s premium payments.

15 (b) An “equity indexed” annuity is an annuity in which the rate of interest the  
16 company provides to the policyholder fluctuates depending upon the performance of a stock market  
17 index, such as the S&P 500.<sup>1</sup> In short, equity indexed annuities are complex derivative products that  
18 lend themselves to abusive sales practices directed toward consumers.

19 19. With a deferred annuity, the annuitant cannot withdraw their investment or the earned  
20 interest without penalty for a number of years after the initial payment of the premium. The penalty  
21 for early withdrawal of either the principal or earnings is called a “surrender charge.” The  
22 percentage of the surrender charge, which typically start as high as 9-10%, declines after a period of  
23 five to eight years, and diminishes further with each passing year for a specified number of years.  
24 The surrender charge is often a hefty penalty to discourage early withdrawal of principal from an

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25  
26 <sup>1</sup> The “S&P 500” is the Standard & Poor’s 500 index, which is a capitalization-weighted index  
27 of 500 stocks. Considered to be a benchmark of the overall stock market, this index is comprised of  
28 500 widely-held Blue Chip stocks representing industrial, transportation, utility and financial  
companies with a heavy emphasis in industrials. The S&P 500 index is commonly used to measure  
stock market performance.

1 annuity. As a result, the terms of deferred annuities severely limit consumers' access to their funds  
2 until American National has fully recouped its high agent commission payments.

3 20. Under California Insurance Code §1631, only licensed insurance agents may solicit,  
4 offer and sell deferred annuities. This licensing requirement guarantees that consumers receive  
5 appropriate guidance when purchasing a deferred annuity and a level of integrity and accountability.  
6 It also attempts to guarantee that only persons who are required to refrain from misleading the  
7 vulnerable consumer will sell these complex products because the agent is subject to regulations and  
8 legal duties requiring him or her to disclose all facts and information within his or her knowledge  
9 regarding a marketed insurance product which may be "material" to a prospective annuitant's  
10 decision to purchase such products. *See, e.g.*, Cal. Ins. Code §§330, 331, 332, 334.

11 **Defendant's Marketing and Sale of Deferred Annuity Policies**

12 21. Defendant American National markets and sells its deferred annuity products  
13 primarily through its network of third-party and/or employed individual sales agents, marketing  
14 organizations, and/or brokerage firms. According to American National's 2007 Annual Report, the  
15 Company uses four principal distribution channels to effectuate the sale of its deferred annuities: the  
16 Independent Marketing Group, the Multiple Line Division, the Career Sales & Service Division, and  
17 the Senior Age Marketing (collectively referred to herein as "Agents").

18 22. Defendant, through its headquarters in Texas, prepares, disseminates and approves  
19 standardized information, brochures, illustrations, marketing and sales materials to Agents for  
20 effectuating the sale of deferred annuities. However, American National's standardized information,  
21 brochures, illustrations, marketing and sales materials systematically omit or fail to disclose that  
22 such annuities are inappropriate investments for consumers, while failing to adequately disclose or  
23 downplaying the substantial risks, drawbacks and other adverse features inherent in deferred annuity  
24 products, including their long-term nature, illusory bonus provisions, riders and massive surrender  
25 charges.

26 23. In addition, American National fail to disclose the full extent of their business  
27 relationships with Agents, commissions and other incentives to push Defendant's deferred annuity  
28



1 products on consumers, and therefore Plaintiff and the Class are unaware of the conflict of interest  
2 created by these relationships.

3 **Defendant's Omissions and Non-Disclosures Regarding Their Deferred Annuity Policies**

4 24. Defendant continues to solicit, market, issue, sell and underwrite deferred annuity  
5 policies to consumers, including Plaintiff and the Class. Unbeknownst to Plaintiff and the Class,  
6 Defendant offers lucrative sales incentives, commissions, perks and other promotions to its Agents  
7 for selling its deferred annuity products. Defendant, in turn, receives immense profits and maintains  
8 or increases its market share from the sale of deferred annuities.

9 25. Defendant knows that their business practices and Affiliated Agents' marketing  
10 practices are illegal, unfair and deceptive, and that the deferred annuities they market and sell  
11 contain numerous disadvantages for consumers. Nonetheless, Defendant has continued to promote  
12 and sell deferred annuities to consumers through its Agents.

13 26. Defendant's marketing materials are designed to appeal to consumers and prey on  
14 their fears of risky or insecure investments. Defendant's customer brochures advertising Amerinan  
15 National deferred annuity products, however, are misleading. Defendant's marketing materials  
16 deceptively promote product features purportedly providing security of principal, wealth  
17 accumulation through generous returns, liquidity and other attributes without disclosing the material  
18 facts from which a consumer would discern that the American National deferred annuities in reality  
19 are illiquid, poorly performing products that carry substantial principal and market risk.

20 27. In addition to surrender penalties, tax disadvantages and other adverse features,  
21 Defendant fails to disclose numerous additional material facts making the deferred annuities  
22 extremely disadvantageous for consumers, including hidden charges and penalties associated with  
23 annuitization options, the use of teaser rates, illusory bonus features, participation rates and caps to  
24 artificially enhance the represented performance of the annuities, the excessive commissions and  
25 other payments made to induce Agents to sell Defendant's annuity products and/or similar material  
26 facts.

27 28. Agents have agreements with Defendant to sell its deferred annuities and are required  
28 to adhere to the sales procedures, protocols and materials dictated, prepared and/or approved by

1 Defendant. These sales protocols and procedures include the use of standard annuity marketing  
2 materials, product guides, agent-use-only materials, illustrations, and form contracts created and/or  
3 authorized by Defendant.

4 29. Defendant pays its Agents bonuses and high commissions for selling deferred  
5 annuities. By doing so, Defendant induces, condones and encourages its Agents to engage in  
6 aggressive and predatory marketing tactics. For example, Defendant and Agents persuade  
7 consumers, such as Plaintiff and the Class, to steer, convert or liquidate other savings or retirement  
8 investments to purchase Defendant's annuities, often resulting in surrender charges incurred for  
9 accessing money after purchasing Defendant's deferred annuity products.

10 30. Defendant engages in various illegal, unfair and deceptive sales practices designed to  
11 mislead consumers regarding the purported benefits and advantages of deferred annuities as  
12 compared to other forms of investments, but omits or fails to disclose the disadvantages of  
13 purchasing a deferred annuity. Defendant's marketing materials are misleading by not adequately  
14 disclosing the hefty surrender charges that remain in effect for the first 9 -10 years of the annuity, by  
15 not adequately disclosing that the lengthy maturity date, and by failing to disclose a host of adverse  
16 material facts and product intricacies making the deferred annuities far inferior to other available  
17 investment products.

18 31. Defendant represents through marketing materials, brochures, agent training guides  
19 and other materials, that the deferred annuities are beneficial because the principal and the interest  
20 they accrue is tax-deferred prior to withdrawal. After that deferral period, it is taxed at ordinary  
21 income tax rates. This may be beneficial to an annuitant who is currently working and, therefore,  
22 paying income tax. A deferred annuity does not typically benefit a senior citizen, however, because  
23 they are already retired and, therefore, not paying as much in income taxes, if at all.

24 32. Because deferred annuities are complex products and features are often  
25 misunderstood by customers, with respect to seniors consumers, insurance companies are required  
26 under California Insurance Code § 10127.13 to disclose all the terms of the surrender provisions in  
27 bold 12-point font on the cover page or policy jacket. However, on information and belief,  
28 Defendant fails to comply with this requirement.



1       33. Defendant's annuity contracts are also drafted so that the average person cannot  
2 readily understand the terms. In addition, Defendant omits or fails to disclose provisions, disclosures  
3 or product features that would typically adversely affect consumers.

4       34. Senior consumers, in part, are an ideal target for Defendant's illegal, unfair and  
5 deceptive business practices and are particularly susceptible to this conduct. Many seniors have a  
6 diminished ability to understand complex investment transactions, harbor concerns about risky  
7 investments and fear outliving their assets.

8       35. To perpetrate its illegal, unfair and deceptive business practices, Defendant omits or  
9 fails to fully or adequately disclose critical information about the attributes and true risks of  
10 American National deferred annuity products, which if disclosed, would reveal that American  
11 National deferred annuities are inferior to comparable investment products. Among other material  
12 facts, Defendant either fails to disclose altogether or inadequately discloses and obscures that:

13               (a) American National deferred annuities are worth substantially less than the  
14 purchaser's original invested funds and, as a result, Class Members who purchase American  
15 National deferred annuities lose substantial value on the date of purchase; Class Members who  
16 purchase American National deferred annuities lose a portion of their investment dollars to cover  
17 sales agents' commissions, American National's profits, investment goals and other undisclosed  
18 expenses;

19               (b) American National pays commissions to its Agents that greatly exceed  
20 commissions paid on mutual funds or more liquid and higher-yielding investments; American  
21 National recoups these exorbitant commission costs from Class Members through undisclosed  
22 actuarial and accounting manipulations that adversely impact the performance of the annuities;

23               (c) The effective cost of owning an American National deferred annuity is far  
24 higher than the costs associated with readily available alternative investments. Because American  
25 National does not disclose the true effective cost of owning an American National deferred annuity  
26 that is analogous to the fully disclosed annual expense ratios of a mutual fund or the annual expenses  
27 of a variable annuity, Class Members are unable to understand the risks, costs and minimal benefits  
28 of the American National deferred annuities;

1 (d) The American National deferred annuities have stiff surrender charges that are  
2 inadequately disclosed in American National's consumer brochures and annuity contracts;

3 (e) American National pays purchasers of equity-indexed annuities only a fraction  
4 of the individual gains in the indexed markets. American National fails to meaningfully disclose the  
5 manner in which the inadequately disclosed caps and index margins interact with changes in the  
6 market indices to determine the actual returns to Class Members;

7 (f) Future performance of American National deferred annuities is dependent on  
8 American National's ability to collect early annuitization penalties and surrender charges;

9 (g) American National utilizes discretion and/or has the ability to penalize Class  
10 Members electing early annuitization, even if the Class Members complied with the penalty-free  
11 restrictions disclosed by American National;

12 (h) American National's deferred annuities carry front-end and/or back end loads  
13 resulting from undisclosed bonus forfeiture policies, unduly steep early surrender charges and bonus  
14 forfeitures;

15 (i) American National retains discretion over the annuity owner's earnings,  
16 which is inadequately disclosed or concealed by indecipherable formulas buried in the annuity  
17 contract;

18 (j) The American National annuity bonuses are illusory because American  
19 National recoups those bonuses through higher surrender charges, longer surrender periods, and  
20 reduced interest charges, caps or participation rates;

21 (k) American National concealed fees and loads through indecipherable product  
22 design and mechanics;

23 (l) American National's death benefit, settlement and/or annuitization provisions  
24 are indecipherable and/or discretionary;

25 (m) American National annuity policies fail to properly explain the calculation of  
26 index credits, and fail to explain that the annuitant's investment might not grow in value in any given  
27 year.

28

1 (n) American National's minimum guaranteed interest rate and initial interest rate  
2 provisions are indecipherable and/or discretionary; and/or

3 (o) Other more liquid and lucrative investments existed with less initial loss  
4 and equal risk protection if held for the same period of time as American National policy owners are  
5 required to hold American National policies to avoid surrender penalties that effectively reduce the  
6 principal investment.

7 36. Defendant's deferred annuity contracts also obscure and hide penalty provisions by,  
8 *inter alia*, the use of misleading headings, indistinguishable text characteristics, confusing verbiage,  
9 inconsistent and ambiguous definitions, and "chain" provisions requiring the reader to refer from one  
10 provision to another provision.

11 37. Additionally, at no time are consumers ever told about the extraordinarily high  
12 commissions and performance bonuses Defendant pays its Agents, *e.g.*, the top sales producers  
13 receive cash bonuses and other perks. These conflicts of interest are universally omitted or not  
14 disclosed by Defendant in all annuity transactions.

15 38. The material facts listed in previous paragraphs were not disclosed to Plaintiff or  
16 potential Class Members because of the stringent control that Defendant maintains over marketing  
17 materials and sales presentations made by its Agents. To effectuate deferred annuity sales,  
18 Defendant requires its Agents to review standardized documents and marketing materials, which  
19 were created, disseminated, and/or approved by Defendant. On information and belief, Defendant  
20 further exerts control over its Agents and sales presentations by requiring marketing organizations  
21 and Agents to submit any advertising, sales, or seminar material not developed by Defendant to  
22 American National for review and approval prior to use.

23 39. Despite exercising reasonable diligence, Plaintiff and the Class could not discover,  
24 and were prevented from discovering, the above instances of Defendant's wrongdoing. The  
25 standardized annuity contracts and marketing and sales materials prepared, approved, and  
26 disseminated by Defendant to Plaintiff and the Class were deceptive and omitted the above-  
27 referenced material information and/or contained insufficient disclosure of the Defendant's true  
28 deferred annuity products and sales practices. Without disclosure of the foregoing material facts and

1 information, these annuity contracts and marketing materials were inherently misleading and  
2 deceptive, and not subject to discovery by Plaintiff and the Class.

### 3 PLAINTIFF'S TRANSACTION

4 40. On or about February of 2005, Plaintiff became a victim of Defendant's illegal, unfair  
5 and deceptive business practices when she was solicited by a licensed American National agent and  
6 was sold a deferred annuity policy issued by American National for \$50,000, policy number  
7 LAR0073387 (attached as Ex. 1). Upon issuance, Plaintiff received all documents related to this  
8 policy. This policy would not mature until 2025, meaning that Ms. Rand would not receive *any*  
9 payments on the annuity until she was *106 years old*, and if she attempted to surrender the policy  
10 before she turned 96, she would have to pay surrender charges as high as 12% for the first year,  
11 declining by 1% for the next nine years.

12 41. On or about October of 2005, Ms. Rand was again solicited and was sold a deferred  
13 annuity policy issued by American National. On this occasion, Ms. Rand purchased an American  
14 National deferred annuity for \$354,669, policy number LAR0074360 (attached as Ex. 2). Upon  
15 issuance, Plaintiff received all documents related to this policy. This policy would not mature until  
16 2025, meaning that Ms. Rand would not receive *any* payments on the annuity until she was *106*  
17 *years old*, and if she attempted to surrender the policy before she turned 96, she would have to pay  
18 surrender charges as high as 12% for the first year, declining by 1% for the next nine years.

19 42. At no time did Defendant, through sales materials or marketing information or  
20 through the American National agent adequately disclose to Ms. Rand the commissions that would  
21 be earned from the sale of the annuity, nor did Defendant or the American National agent adequately  
22 disclose in writing, or by any other means, the substantial surrender charges, maturity dates, fees or  
23 other disadvantages of deferred annuities. Instead, Defendant omitted or failed to disclose these  
24 material facts to Plaintiff.

25 43. The written materials enumerated and described above, which were provided,  
26 approved and/or disseminated by Defendant, omitted material facts as described in paragraph 23-38,  
27 *supra*, and contained numerous other material omissions as described throughout this Complaint.  
28

**DISCOVERY RULE AND EQUITABLE TOLLING**

44. Plaintiff and other Class members did not know and could not reasonably have known through reasonable diligence, of Defendant's illegal, unfair and deceptive business practices and could not have reasonably discovered the omissions or non-disclosures of Defendant's representations, advertising and similar documents until shortly before the filing of this Complaint.

45. To this day, Defendant continues to omit or fail to fully disclose all material facts and risks associated with the deferred annuity products from the Class and public alike. Throughout this time period, Defendant fails to release or provide this material information in a way that Plaintiff and/or Class members could have discovered their illegal, unfair and deceptive business practices. Although the initial decisions to engage in these practices were made some time ago, Defendant has continued with its illegal, unfair and deceptive business practices.

46. Defendant has uniformly trained its agents and other representatives to omit or not to disclose the material facts and risks associated with the deferred annuity products described herein. Defendant did not disclose these material facts in any of its policies or sales and marketing materials provided to Plaintiff and the Class.

47. As a result of the foregoing, Plaintiff and the Class could not reasonably discover the deceptive and anti-competitive practices and did not do so until just recently. For the reasons alleged above, the vast majority of Class members still do not know that they have been and continue to be injured by Defendant's conduct.

48. Defendant's conduct is continuing in nature. There is a substantial nexus between the current illegal, unfair and deceptive conduct and the misconduct prior to that time. The acts involve the same type of illicit practices and are recurring, continuous events.

49. The statute of limitations applicable to any claims that Plaintiff or other Class members have brought or could bring as a result of the conduct alleged herein has been tolled as a result, since Plaintiff and the Class did not and could not have discovered their causes of action until recently, thereby tolling any applicable statute of limitations.

**CLASS ACTION ALLEGATIONS**

1           50. Plaintiff brings this action individually and on behalf of all persons as the Court may  
2 determine to be appropriate for class certification treatment, pursuant to Federal Rules of Civil  
3 Procedure 23(a) and 23(b). Plaintiff asserts class and representative claims against each Defendant  
4 under California Business & Professions Code §§17203, 17204 and 17535. Plaintiff seeks to  
5 represent a California class with regard to all claims. The proposed California class is defined as  
6 follows:

7           (a) All persons (or their beneficiaries) who were issued one or more American  
8 National deferred annuity policies in the State of California, or who, within the applicable statute of  
9 limitations, purchased or surrendered one or more American National deferred annuity policies (“the  
10 Class” or “Class Members”).

11           51. Excluded from the Class are Defendant and their affiliates, predecessors, successors,  
12 officers, directors, agents, servants, or employees, and the immediate family members of such  
13 persons. Also excluded is any trial judge who may preside over this action.

14           52. The members of the Class are so numerous that joinder of all members would be  
15 impracticable. Plaintiff reasonably estimates that the Class members may number into the thousands  
16 or even tens of thousands. The precise number of Class members and their addresses are unknown  
17 to Plaintiff, but can be ascertained through appropriate discovery of Defendant’s records. Class  
18 members may be notified of the pendency of this action by publication and/or other notice.

19           53. There is a well-defined community of interest in the relevant questions of law and  
20 fact affecting putative Class members. Common questions of law and fact predominate over any  
21 individual questions affecting Class members, including, but not limited to the following:

22           (a) Whether Defendant improperly solicited, referred, marketed, issued or sold  
23 deferred annuities to Plaintiff and the Class;

24           (b) Whether Defendants committed unfair, unlawful and deceptive business  
25 practices, in violation of Bus. & Prof. Code §17200, in their marketing, promotion, solicitation, sales  
26 and issuance of deferred annuities to Plaintiff and Class members;

27           (c) Whether Defendants engaged in deceptive advertising in violation of Bus. &  
28 Prof. Code §17500;



1 (d) Whether Defendants committed elder abuse as defined in Welf. & Inst. Code  
2 §15600 *et seq.*;

3 (e) Whether Defendant has been unjustly enriched at the expense of the Class;

4 (f) Whether Plaintiff and members of the Class have sustained damages;

5 (g) Whether Plaintiff and the Class are entitled to damages; and

6 (h) Whether Plaintiff and the Class is entitled to injunctive, declaratory and/or  
7 other relief.

8 54. Plaintiff's claims are typical of those of the absent Class members. If brought and  
9 prosecuted individually, the claims of each Class member would require proof of many of the same  
10 material and substantive facts, rely upon the same remedial theories, and seek the same relief.

11 55. The claims of Plaintiff and other Class members have a common origin and share a  
12 common basis. The claims originate from the same wrongful conduct by Defendant, including its  
13 illegal, unfair and deceptive conduct.

14 56. Plaintiff's claims are sufficiently aligned with the interests of the absent members of  
15 the Class to ensure that the Class claims will be prosecuted with diligence and care by Plaintiff as  
16 representative of the Class.

17 57. Plaintiff will fairly and adequately protect the interests of the Class and has no  
18 interests adverse to or that directly and irrevocably conflict with the interests of other Class  
19 Members. Plaintiff is willing and prepared to serve the Court and the putative Class in a  
20 representative capacity with all of the obligations and duties material thereto.

21 58. Plaintiff is willing and prepared to serve the Court and proposed Class in a  
22 representative capacity with all of the obligations and duties material thereto.

23 59. Plaintiff has retained the services of counsel, identified below, who are experienced in  
24 complex class-action litigation and, in particular, class actions involving insurance matters, who will  
25 adequately prosecute this action, and will otherwise assert, protect and fairly and adequately  
26 represent Plaintiff and all absent Class members.

27 60. Class certification is appropriate under F.R.C. P. 23(b)(1), in that the prosecution of  
28 separate actions by individual Class Members would create a risk of inconsistent or varying

1 adjudications, which would establish incompatible standards of conduct for the parties opposing the  
 2 Class. Such incompatible standards of conduct and varying adjudications on the same essential  
 3 facts, proof and legal theories would also create and allow the existence of inconsistent and  
 4 incompatible rights within the Class.

5 61. Class certification is appropriate under F.R.C.P. 23(b)(2), in that Defendant has acted  
 6 or refused to act on grounds generally applicable to the Class, making final declaratory or injunctive  
 7 relief appropriate.

8 62. Class certification is appropriate under F.R.C.P. 23(b)(3), in that common questions  
 9 of law and fact predominate over any questions affecting only individual Class Members.

10 63. Moreover, a class action is superior to other methods for the fair and efficient  
 11 adjudication of the controversies raised in this Complaint because:

12 (a) individual claims by the Class Members would be impracticable as the costs  
 13 of pursuit would far exceed what any one Class Member has at stake;

14 (b) little individual litigation has been commenced over the controversies alleged  
 15 in this Complaint, and individual Class Members are unlikely to have an interest in separately  
 16 prosecuting and controlling individual actions;

17 (c) the concentration of litigation of these claims in one forum will achieve  
 18 efficiency and promote judicial economy; and

19 (d) the proposed Class action is manageable.

20 64. Therefore, class treatment of Plaintiff's claims is appropriate and necessary.

## 21 **COUNT I**

### 22 **Violation of California Business & Professions 23 Code §§17200 *et seq.***

#### 24 **(Against Defendant)**

25 65. Plaintiff and the Class repeat and reallege all allegations contained in the Complaint  
 26 as if set forth separately in this Cause of Action.

1           66. California Business and Professions Code §17200 prohibits any “unlawful . . .  
2 business act or practice.” Defendant has violated §17200’s prohibition against engaging in an  
3 unlawful act or practice by, *inter alia*, the following:

4           (a) violating California Business and Professions Code §17500 *et seq.* (as alleged  
5 in the Second Cause of Action);

6           (b) by omitting or failing to provide full, adequate disclosure of all material facts  
7 and risks associated with the deferred annuity products, including but not limited to the risks  
8 involved, surrender charges, undisclosed commissions and other consequences as set forth herein,  
9 Defendant has violated Cal. Ins. Code §§ 330-334, 762, 780, 781, 10509, *et seq.*;

10           (c) by failing to provide full or adequate disclosure that the deferred annuity sold  
11 involves investment risk including the potential that principal may be lost and the product may  
12 decline in value, Defendant has violated Cal. Ins. Code §§ 761-762;

13           (d) violating Cal. Civ. Code §§ 1750, *et seq.*

14           (e) violating California Welfare and Institutions Code §§15610.30 and 15657.5 *et*  
15 *seq.* (as alleged in the Third Cause of Action);

16           (f) by failing to conduct themselves with persons over the age of 65 in good faith,  
17 honesty, and fair dealing, Defendant has violated Cal. Ins. Code §§ 785 *et seq.*;

18           (g) by issuing or approving advertising that was deceptive or misleading about the  
19 nature of their sales presentation of deferred annuities or failing to disclose leads, such as bank  
20 tellers or sales agents, that generate contact with a person over the age of 65, Defendant has violated  
21 Ins. Code §§ 787 *et seq.*;

22           (h) by omitting or failing to provide full, adequate disclosure of all material facts  
23 and risks associated with the deferred annuity products to persons over the age of 65, including  
24 but not limited to the risks involved, surrender charges, undisclosed commissions and other  
25 consequences as set forth herein, Defendant has violated Cal. Ins. Code §§ 789.8 *et seq.*, 10509, *et*  
26 *seq.*;

27           (i) by failing to provide full or adequate disclosure to a person over the age of 65  
28 that the sale or liquidation of any stock, bond, IRA, certificate of deposit, mutual fund, annuity or

1 other asset to fund the purchase of the deferred annuity sold involves tax consequences, early  
2 withdrawal penalties, investment risk, or other costs or penalties and should consult with a legal or  
3 financial professional before purchasing, Defendant has violated Cal. Ins. Code §§ 789.8;

4 (j) by failing to provide full or adequate disclosure that the deferred annuity sold  
5 to a person over the age of 65 allows for an examination period of 30 days (at which time the  
6 applicant may return/cancel the contract), Defendant has violated Cal. Ins. Code § 10127.10; and

7 (k) by failing to provide full and adequate disclosure of information concerning a  
8 deferred annuity's surrender charge period and penalties, Defendant has violated Cal. Ins. Code  
9 § 10127.13.

10 67. Plaintiff and the Class reserve the right to allege other violations of law which  
11 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this  
12 day.

13 68. California Business and Professions Code §17200 prohibits any "unfair . . . business  
14 act or practice." As detailed in the preceding paragraphs, Defendant engages in a systematic scheme  
15 to sell deferred annuities to Plaintiff and the Class, in violation of state and federal law and the  
16 fundamental policies delineated in statutory provisions. Defendant gained the trust of Plaintiff and  
17 the Class, had access to their financial information and induced them into purchasing deferred  
18 annuities – omitting or without disclosing all material facts and risks associated with the deferred  
19 annuity products. As a result, Defendant engages in unfair business practices prohibited by  
20 California Business and Professions Code §17200 *et seq.*

21 69. California Business and Professions Code §17200 prohibits any deceptive business  
22 practice likely to deceive the public. As detailed in the preceding paragraphs, Defendant's conduct  
23 was likely to deceive Plaintiff, the Class and the public by, *inter alia*, omitting or failing to disclose  
24 all material facts and risks associated with the deferred annuity products, including, but not limited  
25 to the disadvantages of purchasing a deferred annuity such as their the steep surrender charges and  
26 lengthy maturation periods.

27 70. Moreover, Defendant omitted information about the disadvantages of having a  
28 deferred annuity, as well as information about the lack of access Plaintiff and the Class would have

1 to their annuity investments. Defendant also failed to disclose surrender charges; that the disclosed  
 2 rate of return was, in actuality, a “teaser rate” in effect only for the first month and that the rate of  
 3 return would dramatically reduce after the first month; and/or that the so-called “bonus” features  
 4 used by Defendant to lure elderly purchasers are rendered illusory by indecipherable forfeiture and  
 5 penalty provisions and, in fact, *acted as a financial burden*, rather than a valuable benefit.

6 71. Defendant aided and abetted its co-conspirators in accomplishing the wrongful acts.  
 7 In doing so, Defendant acted with an awareness of their wrongdoing and realized that its conduct  
 8 would substantially assist the accomplishment of the wrongful conduct.

9 72. As a result of Defendant’s practice, Plaintiff and the Class have suffered injury-in-  
 10 fact, including but not limited to, incurring financial losses, including access to needed funds,  
 11 unnecessary and concealed fees and penalties, undisclosed commissions, charges (including  
 12 surrender charges) and penalties that she and Class Members would not have otherwise incurred.

13 73. Unless Defendant is enjoined from continuing to engage in the unlawful, deceptive  
 14 and unfair business practices described above, members of the general public residing within the  
 15 United States, including California, will continue to be damaged.

16 74. Pursuant to California Business and Professions Code §17203, Plaintiff seeks an  
 17 order requiring Defendant to immediately cease such acts of unlawful, unfair and deceptive business  
 18 practices and requiring them to return the full amount of money improperly collected – including,  
 19 but not limited to, commissions and profits from the sale of annuities, income derived from penalties  
 20 and fees – to all those who have paid them – plus interest and attorneys’ fees.

## 21 **COUNT II**

### 22 **Violation of California Business & Professions** 23 **Code §17500 *et seq.***

#### 24 **(Against Defendant)**

25 75. Plaintiff and the Class repeat and reallege all allegations contained in the Complaint  
 26 as if set forth separately in this Cause of Action.

27 76. Defendant has issued, ratified and/or approved misleading or deceptive  
 28 advertisements that directly or indirectly consumers into purchasing deferred annuity products.

1 Letters, postcards, marketing materials and advertising websites prepared by Defendant, as well as  
2 those prepared by its Agents and then ratified and/or approved by Defendant, are tailored to attract  
3 consumers into purchasing its deferred annuity products.

4 77. Defendant has ratified, approved and/or turned a blind eye towards, the issuance of  
5 deceptive or misleading advertisements representing its Agents are certified financial planners and  
6 other bona fide service providers, without also disclosing that they are insurance agents and brokers  
7 who sell insurance for American National and receive compensation therefor.

8 78. Defendant has issued, ratified and/or approved misleading or deceptive marketing  
9 materials and advertisements about the deferred annuity policies that they sell.

10 79. Defendant omitted or failed to disclose to Plaintiff, the Class or the general public that  
11 deferred annuities may be inappropriate investments for consumers, instead providing virtually  
12 uniform messages that annuities are perfect investments for consumers.

13 80. In making and disseminating these statements and advertisements, Defendant knew or  
14 should have known that they were deceptive or misleading.

15 81. Defendant had or should have approved all of its Agents' advertisements and  
16 marketing materials, and are, therefore, liable for such deceptive or misleading advertisements even  
17 if it did not issue them directly.

18 82. Defendant aided and abetted its co-conspirators in accomplishing the wrongful acts.  
19 In doing so, Defendant acted with awareness of its misconduct and knew that its conduct would  
20 substantially further the wrongful conduct.

21 83. As a result of Defendant's misconduct as alleged herein, Plaintiff and the Class have  
22 incurred actual financial losses and damages, including, but not limited to, penalties, fees, charges  
23 and deductions as a result of following the advice and recommendations of Defendant, fees and  
24 charges for the purchase of inappropriate financial products and taxes, assessments and penalties  
25 they would not have otherwise incurred but for reliance on Defendant's advice and  
26 recommendations.



84. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff, the Class and the general public have suffered injury-in-fact, including, but not limited to, monetary and non-monetary damages.

85. Unless Defendant is enjoined from continuing to engage in such wrongful actions and conduct, members of the general public will continue to be damaged by Defendant's deceptive and misleading advertising.

86. So as not to be unjustly enriched by its own wrongful actions and conduct, Defendant should be required to disgorge and restore to Plaintiff, members of the Class, and the general public, all monies wrongfully obtained by Defendant as a result of their deceptive and misleading advertising, along with interest.

### COUNT III

#### **Financial Elder Abuse, California Welfare & Institutions Code §15600 *et seq.***

#### **(Against Defendant)**

87. Plaintiff and the Class repeat and reallege all allegations contained in the Complaint as if set forth separately in this Cause of Action.

88. Defendant's conduct constitutes financial abuse under California Welfare and Institutions Code §15657.5 *et seq.*, as defined in California Welfare and Institutions Code §15610.30. Section 15610.30(a) provides in relevant part:

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(i) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(ii) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

89. At all relevant times, Defendant took and/or assisted in the taking of property from Plaintiff and the Class (who are all 65 or older) for their own wrongful use. Plaintiff and other senior members of the Class trusted and relied on Defendant.

1           90. Defendant induced Plaintiff and other senior members of the Class into purchasing  
2 deferred annuities.

3           91. In doing so, Defendant acted with an awareness of its wrongdoing and realized that  
4 their conduct would substantially assist the accomplishment of the wrongful conduct.

5           92. Defendant aided and abetted its co-conspirators in accomplishing the wrongful acts.  
6 In doing so, Defendant acted with awareness of its misconduct and knew that its conduct would  
7 substantially further the wrongful conduct.

8           93. Defendant's conduct was reckless and/or oppressive within the meaning of California  
9 Welfare and Institutions Code § 15657.5 *et seq.*

10           94. Under California Welfare and Institutions Code §15657.5 *et seq.*, Defendant are liable  
11 for reasonable attorneys' fees and costs for investigating and litigating this claim.

12           95. Under California Civil Code §3294 and California Welfare and Institutions Code  
13 §15657.05(a), Defendant is liable for punitive damages.

14           96. Under California Civil Code §3345, Defendant is liable for treble damages and  
15 penalties because: (a) Defendant knew or should have known its conduct was directed to a senior  
16 citizen; (b) its conduct caused a senior citizen to suffer substantial loss of property set aside for  
17 retirement, and assets essential to their health and welfare; (c) Plaintiff and other senior members of  
18 the Class are senior citizens who are more vulnerable than others to Defendant's conduct because of  
19 their age, impaired understanding, impaired health or restricted mobility and (d) Plaintiff and other  
20 senior members of the Class actually suffered substantial physical, emotional and economic damages  
21 resulting from Defendant's conduct.

22           97. Under California Welfare and Institutions Code §§15657.5 *et seq.*, Defendant is liable  
23 to Plaintiff and the senior members of the Class for their pain and suffering.

24                                   **PRAYER FOR RELIEF**

25           WHEREFORE, Plaintiff, on behalf of herself, the Class, and the general public, prays for  
26 judgment against Defendant as follows:

27           A. An order certifying this action as a Plaintiff class action under Rule 23 of the Federal  
28 Rules of Civil Procedure as set forth herein;

1 B. For a temporary, preliminary and permanent order for injunctive relief enjoining  
2 Defendant from pursuing the practices complained of above;

3 C. For a temporary, preliminary and permanent order for injunctive relief requiring  
4 Defendant to undertake an immediate public information campaign to inform members of the  
5 general public as to their prior practices and notifying the members of the proposed Class of the  
6 potential for restitutionary relief;

7 D. For an order requiring disgorgement and restitution of Defendant's ill-gotten gains  
8 and to pay restitution to Plaintiff, the Class, and the general public all funds acquired by means of  
9 any practice declared by this Court to be unlawful, deceptive or unfair;

10 E. For compensatory, special and general damages according to proof and as the Court  
11 deems just and proper;

12 F. Assuming certification of the Class pursuant to Rule 23 of the Federal Rules of Civil  
13 Procedure, for distribution of any moneys recovered on behalf of the general public, or the Class, via  
14 fluid recovery or *cy pres* recovery where necessary to prevent Defendant from retaining any of the  
15 profits or benefits of their wrongful conduct;

16 G. For punitive and exemplary damages under Welf. & Inst. Code §15657(a), Civil Code  
17 §1780(a)(4), Civil Code §3294; and as to counts for which they are available under the applicable  
18 law in such amount as the Court deems just and proper;

19 H. For treble damages and penalties under Civil Code §3345; Bus. & Prof. Code §§6153,  
20 6175.4, 6175.5 and 17206.1; and Ins. Code §789; and as to counts for which they are available under  
21 the applicable law in such amount as the Court deems just and proper;

22 I. For double damages under Probate Code §859; and as to counts for which they are  
23 available under the applicable law in such amount as the Court deems just and proper;

24 J. For transfer of the wrongfully obtained monies and/or property under Probate Code  
25 §§850-859 *et seq.*;

26 K. Imposition of a constructive trust, an Order granting recessionary and injunctive relief  
27 and/or such other equitable relief, including restitution, disgorgement of ill-gotten profits and an  
28

1 order requiring Defendants to provide corrective notice to Class Members as set forth herein and as  
2 the Court deems just and proper;

3 L. An appropriate claims resolution facility to administer the relief in this case;

4 M. For reasonable attorneys' fees and costs of investigation and litigation under, among  
5 other statutes, C.C.P. §1021.5; Welf. & Inst. Code §§15657.05 *et seq.*, 15657.5 *et seq.*; C.C.P.  
6 § 2033, *et seq.*; and Civil Code §1780(d) or the common fund doctrine;

7 N. For costs of lawsuit, pre-judgment, and post-judgment interest; and

8 O. Such other and further relief as the Court may deem necessary or appropriate.

9 **JURY DEMAND**

10 Plaintiff and the Class hereby demand a trial by jury.

11 Dated: February 12, 2009

12 WATERS KRAUS & PAUL LLP  
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